

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

IN RE: ERNESTO GONZALEZ, <div style="text-align: center;">Debtor</div> <hr style="border: 0.5px solid black;"/> HARBOR CAPITAL, LLC, <div style="text-align: center;">Plaintiff</div>	§ § § § § § § § §	MAIN CASE NO. 08-70701-M-13 (CHAPTER 13)       ADVERSARY PROCEEDING NO. 08-07047-M
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v. ILP, L.L.C., ERNESTO GONZALEZ, and MARIA DEL ROSARIO GONZALEZ, <div style="text-align: center;">Defendants</div>	§ § § § § § § § §	ADVERSARY PROCEEDING NO. 08-07047-M
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**PLAINTIFF’S MOTION FOR FORFEITURE OF SUPERSEDEAS BOND**

Comes now Plaintiff Harbor Capital, L.L.C., and moves for forfeiture of the supersedeas bond posted by Defendants as follows:

**I. Background**

1. On November 26, 2008, this Court entered its Order Enforcing Injunction [DE 14 ] allowing Plaintiff to retake possession of its printing press. Defendants filed a Motion for Reconsideration, which this Court denied by written order entered on January 9, 2009 [DE 37 ]. The Court granted Defendants’ motion for stay pending appeal, conditioned on the posting of a recurring, monthly supersedeas bond in the amount of \$41,893.00.

2. Defendants appealed the January 9, 2009 order to District Court (Civil Action No. 09-CV-16, U.S. District Court, Southern District of Texas, McAllen Division). In the appeal, Defendants requested that the District Court reduce the monthly bond of \$41,893.00 previously set by this Court.

3. During a hearing on January 23, 2009, the District Court orally ordered that the monthly supersedeas bond be reduced from \$41,893.00 to \$25,000.00. On February 9, 2009, the District Court entered a written order reducing the monthly bond to \$25,000.00. *See* Exhibit A.

4. On or about January 27, 2009, the Defendants posted the initial \$25,000.00 supersedeas bond. A copy of the bond check, and the docket entry for the bond deposit, are included as Exhibit B. Defendants failed to post the second supersedeas bond payment. Plaintiffs began removal on the press on or about March 9, 2009, and the removal was completed approximately 10 days later.

5. On June 16, 2009, Defendants filed an unopposed motion to dismiss their appeal in District Court. *See* Exhibit C. On June 20, 2009, the District Court entered an Order Dismissing Appeal. *See* Exhibit D. In its Order, the District Court remanded the issues related to the release or payment of the \$25,000.00 bond to this Court for final determination. *See* Exhibit D.

6. Plaintiff incorporates the attached Exhibit E for evidentiary support of the factual statements made in this motion.

## **II. Argument**

7. The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party's rights pending appeal. *Poplar Grove Planting and Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190 (5th Cir.1979). The bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal. *Id.* at 1191.

8. Defendants were granted a stay pending appeal by this Court. They then appealed the bond amount, and were granted a reduction of the monthly supersedeas bond by the District Court. Plaintiff was forced to forgo execution of the injunction and repossession of the printing press for 30 days after Defendants posted the supersedeas bond. Defendants' appeal was ineffectual on the merits as they voluntarily dismissed the appeal. The \$25,000.00 supersedeas bond should be forfeited to Plaintiff as compensation for the loss of the use and enjoyment of the printing press.

during the 30 days they were stayed from executing on the injunction.

### **III. Prayer**

Wherefore, premises considered, Plaintiff requests that the \$25,000.00 supersedeas bond deposited with the clerk of the court (receipt number 599772) be forfeited, that this Court order that the clerk of the court pay said bond to “Harbor Capital, L.L.C.,” and that said payment be mailed to the undersigned counsel for Plaintiff.

Respectfully submitted,

/S/ CHRISTOPHER A. FUNK

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### **CERTIFICATE OF SERVICE**

I, CHRISTOPHER A. FUNK, hereby certify that on the 9<sup>th</sup> day of July, 2009, a true and correct copy of the foregoing document has been served electronically pursuant to Bankruptcy Local Rule 5005 and Rule 2.C., Administrative Procedures for Electronic Filing or, to those not served electronically, by first class mail to the following parties:

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